of *Carolis De Silva v. Tim Kim*[2] is authority that they can and indeed the appellant's counsel did not contend that such marriages were impossible.

In accordance with these decisions their Lordships hold that the Common Law of England was in force in Singapore in 1937 except in so far as it was inapplicable and except in so far as it was necessary to modify it to prevent hardships upon the inhabitants who were entitled by the terms of the Charter to the exercise of their religions manners and customs.

Their Lordships agree with the view expressed by Mr. Justice Evans in the Court of Appeal in the present case that in a country such as Singapore where priests are few and there is no true parochial system, where the vast majority are not Christians, it is neither convenient nor necessary that two persons such as the respondent and the deceased should be required to call in an episcopally ordained priest to effect a marriage. The case of *Wolfenden v. Wolfenden*[3] and the cases there cited are in point and were in their Lordships' opinion rightly decided.

There was no form of a ceremony of marriage in the present case which was applicable to both parties to the marriage and accordingly they seem to have adopted a composite ceremony, the wife worshipping according to her Chinese custom and the husband according to his Jewish custom.

Such a ceremony performed in the circumstances already stated was indubitably intended by the parties to constitute a valid marriage. The only question which in their Lordships' view admits of any doubt is the question whether the marriage intended by the parties to be constituted by the ceremony was a Common Law monogamous marriage or a Chinese polygamous marriage.

This question was not raised in the Courts below and no questions were put to the respondent in cross-examination on the subject. Abraham Penhas was dead and in such circumstances it would, in their Lordships' opinion, be altogether wrong to invalidate a marriage so solemnized followed as it was by years of cohabitation as man and wife and to bastardize the two children of the marriage, even if the other evidence were equivocal as to the status intended. But it is not necessary to decide the case on this narrow ground for their Lordships hold that the evidence as it stands sufficiently proves a Common Law monogamous marriage. The wishes expressed by the respondent and her mother for a Church marriage, the reason why a modified Chinese ceremony was substituted, the presence of Jewish friends at the ceremony, the words spoken by the Chinese gentleman who performed the ceremony as to a life-long union, the cohabitation as man and wife followed and continued till the husband's death and the introduction by the deceased to a Christian pastor of the respondent as his wife and last but not least the baptism of their children as Christians with the approval of their father all indicate that the spouses intended to contract a Common Law monogamous marriage.

Their Lordships will therefore humbly advise Her Majesty that this appeal ought to be dismissed. The appellant must pay the costs of the appeal.

Appeal dismissed.

COMMISSIONER FOR LABOUR for and on behalf of TAY CHOON KEONG v. CHOP CHOONG JOO.

[Workmen's Compensation (W. G. Alcock, Commissioner) March 10, 1953]

[Singapore — C.W.C. No. 182 of 1952]

Workmen's Compensation Ordinance (Cap. 70), ss. 12 and 15 — Definition of "workman" in s. 2.

A male workman by the name of Tay Choon Keong alleged to have been employed by the respondent on the 27th day of January 1951 received personal injury by accident arising out of and in the course of his employment. The cause of injury was that he fell to the ground from a plank while taking goods from a twako to a lorry. Tay Choon Keong sustained a fractured spine — paralysed from waist down (100% loss of earning capacity). He claimed a lump sum of $4,800.

The respondent denied that the applicant workman was employed by the respondent. It was alleged by the respondent that the applicant was in fact employed by one Tan Bak Chok to do work for which the said Tan Bak Chok was occasionally engaged by the respondent.

The following Issues were framed:

1. Was the applicant in the employ of the respondents?
2. If not, can the respondent be made liable under section 15 of the Ordinance?
3. In either case, was the applicant a person whose employment was of a casual nature and who was employed otherwise than for the purpose of the respondent's trade or business so as to disentitle him for relief under the Ordinance in view of the definition of "workman" in section 2 of the Ordinance?
4. If the respondent is held to be liable, was adequate Notice of the accident given under section 12 of the Ordinance and was the claim for compensation made within the proper time under that section?
5. As to quantum of compensation, what were the wages of the applicant?

The case was argued on three issues: (i) was the applicant in the employment of the respondent; (ii) was adequate notice given under section 12 of the Ordinance and the claim made within the proper time; (iii) the amount of wages. The respondent did not press the third issue and the second issue was not argued as being unnecessary for the determination of the case.

Held: (1) the applicant fell from a plank on 27th January 1951 while engaged in unloading cargo from a lighter at Boat Quay, Singapore, and suffered injury; that he was a workman employed by the respondent at the time of the accident; that notice not having been

given to the respondent within seven days after the happening thereof the respondent was not prejudiced in his defence for the want of such notice; that the applicant failed to pursue his claim within six months from the occurrence of the accident; and that the wages of the applicant were $110 a month; (2) the accident arose out of and in the course of the applicant's employment with the respondent; and that failure to make the claim within six months of the occurrence of the accident was not occasioned by a reasonable cause within the meaning of section 12 of the Ordinance.

Cases referred to:—

(1) *Simmons v. The Heath Laundry Co.* 3 B.W.C.C. 200; (1910) 1 K.B. 543.
(2) *Curtis v. Plumptre* (1913), 6 B.W.C.C. 87.
(3) *Templeton v. Parkin* 22 B.W.C.C. 110.
(4) *Bobbey v. Crosbie Ltd.* 9 B.W.C.C. 142; (1915) W.N. 406.
(5) *Taylor v. Burnham (No. 2)* 3 B.W.C.C. 569.
(6) *O'Donnel v. Clare County Council* 6 B.W.C.C. 457.
(7) *Lewis v. Stanbridge* 6 B.W.C.C. 568.
(8) *Eydmann v. Premier Accumulator Co. Ltd.* 9 B.W.C.C. 384.
(9) *Scott v. Guest* 31 B.W.C.C. 395.
(10) *Philips v. Sidebottom & Co.* 27 B.W.C.C. 382.
(11) *Gill v. Boniface* 25 B.W.C.C. 346.
(12) *Walker v. Crystal Palace Football Club Ltd.* 3 B.W.C.C. 53.
(13) *Maund v. Barton* 17 B.W.C.C. 131.

WORKMEN'S COMPENSATION.

Kok Ah Loy, Asst. Commissioner for Labour in person.

G. E. N. Oehlers for the respondent.

Alcock, C.W.C.: —I have no doubt that the respondent was not aware at the time of the accident either that an accident had taken place or that the applicant was working on his goods or was entitled to call himself a workman of the respondent — in fact he neither knew nor had heard of the applicant. The situation is not uncommon among workmen and employers in this Colony — that the workman has no knowledge who was his real and ultimate employer and the employer had no knowledge who is his workman. This arises from that system which, for want of a better word — I call the "sub-contracting" system, found so extensively in the employment and engagement of labour in the Colony. The employer deals with a "*kepala*" or gang leader or foreman or "*tindal*" or some person to whom he makes payment of lump sums of money the amount depending on the work done e.g. the number of packages carried or as the case may be; the *kepala* in turn engages the labour, does the work and distributes the money received among the labourers.

The case was argued on three issues; (i) was the applicant in the employ of the respondent; (ii) was adequate notice given under section 12 of the Ordinance or the claim made within the proper time; (iii) the amount of wages.

The respondent did not press the third of the issues accompanying his statement and I indicated during the hearing that I was satisfied with regard to the second of his issues that the respondent could not, on the evidence, in any event be made liable under section 15 of the Ordinance.

The first issue of importance is — Was the applicant a workman, that is to say, was he engaged under a contract of service or was he on the other hand, engaged on a contract for services, or an independent contractor? A considerable amount of evidence was available and, disregarding the applicant's own evidence (who I think stretched the truth to make the best of his claim) and taking the evidence of other workmen who from the circumstances could be nothing but impartial, the situation was that the respondent who is engaged — among other things — as an importer of joss paper and similar articles from outside the Colony had been accustomed for many years to deal with one particular man by the name of Tan Bak Chok, who was *kepala* of a gang of some 10 to 13 persons which gang was accustomed to doing the work of unloading goods from the lighter, bringing the respondent's goods to the quay, on to lorries and thence from the lorries to the respondent's store. This arrangement was clearly of long standing. Ten years was mentioned as the time it had been in force. The work was done 2 or 3 times a month. Similar long standing arrangements were made with the lighter owner which brought the goods from the ship and with the lorry owner which supplied the lorries. The gang, the lorry men and the lighter men from long experience all knew their work and once the news was given — which was generally obtained by the *kepala* or one of the gang from the respondent's shop — that goods had arrived from abroad and that there was work to be done, then all the parties who knew their parts perfectly went into action and carried out the work, no direct supervision nor the presence of the respondent being required. The *kepala* was then paid a lump sum for the job which he distributed among his gang. This lump sum depended upon the amount carried at agreed rates. The rates were fixed by a tariff established between the Labour Union and an Association of employers engaged

in the respondent's line of trade. The *kepala* or gang spokesman worked along with his fellow gangers and received no extra remuneration. He was apparently a spokesman for the gang, that is he was *primus inter pares* and not a superior of his co-gangers.

The gang worked for a number of people and took in any work available; but they clearly considered themselves bound to give preference to the work of two particular employers — the respondent and the firm of Lam Soon, also an importing concern. When the work of these men were to be done, then other work was postponed; but generally speaking it seemed possible to do their work and the work of others without difficulty, the work of others being however postponed. On occasion when there was a rush of work for these two principal employers, then extra hands might be taken on to get the work done in that space of time which was apparently considered proper. It was not apparently necessary for the gang as a whole to agree to the incorporation of another worker for a special job even though this might mean a lessening of the share of the lump sum received for the whole work.

The applicant was one such extra worker taken on for a special rush of work when work of both the two principal employers of the gang had to be undertaken at the same time. The employer never interfered — but he had no need to interfere. He considered himself entitled, however, to hasten the work if he thought fit. In point of fact he never had had occasion to do so.

It was when the applicant had been taken on by one member of the gang and was working on a cargo for the respondent that the accident occurred, and the point to be decided is whether in these circumstances the respondent is liable to pay the compensation under the Ordinance.

The type of work is one clearly referred to in the second schedule to the Ordinance, sub-section (h). But having been taken on in this gang and being in the same position as the other members of the gang, is an individual member of it or temporary member of it to be treated as an independent contractor or as persons having entered into a contract for services rather than as workman who has entered into a contract of service with the respondent.

This is a question of fact for the decision of the arbitrator (*Simmons v. The Heath Laundry Co.*[1]). There have been numerous cases in the U.K. on this subject and the great majority of recent cases in Singapore have turned on this same point. The "gang" system, "labour contractor" system and a fondness for paying the labour for the job done rather than at so much an hour in the Colony raises that question most acutely here. The essential matter to be considered is the amount of control exercised over the person rendering the services by the person to whom they were rendered. The greater the amount of such direct control the more clear it is that the contract is one "of service"; the lesser the control the more clear that it is a contract "for services". The extreme cases are easy to define — on the one hand, the factory hand directly employed under the employer's absolute control, and on the other, persons in the nature of musicians, doctors or counsel. These relationships have been referred to the authorities and need not be referred to here. The question to be asked has been best put in the *Simmons case*[1] quoted above at page 209 by Buckly, J.:—

> "What was the man employed to do, was he employed upon the terms that he should within the scope of his employment, obey his master's orders, or was he employed to exercise his skill, and achieve an indicated result in such manner as, in his judgment, was most likely to ensure success?"

In most cases where the contract is one for services, the person rendering them has some special skill (though it may be of a small scale), or some plant or equipment (though it may be the most primitive), or some form of capital (be it his named skill or something more material) other than his mere capacity to labour which makes it that he is working on his own account to produce the result he had been asked to produce. It is important to note that the control is the control which the employer is entitled to exercise rather than control which he does exercise for clearly a workman may very well be a workman directly subject to the control of an employer and yet no orders may have passed while the work is being done apart from that minimum of initial instruction which must have been given at some period but given perhaps long in the past. The better the workman the less supervision he needs and the fact that an employer has not in fact constantly stood over the workman does not mean that the workman is not a workman within the meaning of the Ordinance. In this case the work was *cooly* work — pure labour. Though I agree that porters may show skill, nonetheless it is primarily pure labour (i.e. muscle) which is supplied. If the person rendering the services does no more than employ his muscles for the benefit of the employer then I think it is difficult to say that the control and direction in respect of the work is not with the employer, although as in the case here, because the gang knew their work and because the work was simple, the employer need not be and was not present and he gave only the very briefest of instructions when the gang was first employed. Cases of more skilled workmen — carpenters, painters, mechanics and the like — where there is some skill or

craftsmanship employed, may require to be classified as contract for services, because skill is used to achieve an indicated result but where it is primarily muscular strength which was given, then I find it very hard to believe that in that type of work a workman is involved in a contract for services. The fact that the word so commonly used in connection with this type of relationship so commonly found in the Colony is work by a "labour contractor" cannot disguise the real nature of the work. One of the respondent's witnesses referred to the different types of work "female work" "outside work" and the like — meaning that some types of work were carried out by women, some work was work of the nature of porterage and the like carried on outside employers' premises and not required constantly but only occasionally and from time to time. If the respondent in this case had gone to a stevedoring firm who as an entity having an organisation and capital and employed porters whom they paid and directed and for whom they were responsible, then he would have entered into a contract for services. But he did not do so; he contracted with a gang through its spokesman. The spokesman was in the position of a foreman for him; the employer was concerned to get the work done and pay a lump sum. The Ordinance defines workmen but not with reference to this distinction between contract of service and for services. The preamble explains the Ordinance as "to provide for the payment by certain classes of employers to their workmen". Among those classes were those who employ workmen defined in para (h) of the schedule. Is the Ordinance to be read so as to exempt that considerable class of employer in the Colony who employ the very large number of workmen on the "gang" or labour contractor system? It has been explained by one text book writer (*Willis* 37th Ed. p. 211) that the primary objection of one of the sections of the English Act (the equivalent to our section 15) is to prevent an employer escaping liability by contracting with someone else to supply labour or execute work. I suggest the same point must be kept in mind in considering whether a man must be defined as under a contract of service or for rendering services. Is it the case that the Ordinance must be read to exclude men as workmen unless they can show they are completely at the beck and call of the employer? To do so would exclude a large number of workmen in the Colony engaged in the "gang" and labour contractor systems. I cannot think this is the intention of the Ordinance. In this case the respondent by dealing with the gang — as he did — through the *kepala*, the spokesman of the gang, made the latter his foreman with power to co-opt workmen to get the work done, the wages being the amount paid over to the gang for the job and re-distributed among them.

There was quoted to me a number of cases; *Curtis v. Plumptre*[2], *Templeton v. Parkin*[3], *Bobbey v. Crosbie Ltd.*[4]. There can be quoted any number of cases where the facts are very similar but the result is different. Reference might be made to the case of *Taylor v. Burham (No. 2)*[5] or *O'Donnel v. Clare County Council*[6] or *Lewis v. Stanbridge*[7]. For every case — and there are many — where a man has been found to be an independent contractor or one engaged in a contract for services there seems to be another on very similar facts where a contrary finding is made. The most interesting in point is that of *Bobbey v. Crosbie Ltd.*[4] where the facts were very similar, in that again a gang was employed for porterage, the injured workman being one temporarily taken on by the gang leader and injured in the course of the work. It was pointed out that the respondent's principal officer was present during the operation which showed control and made it different from the case under consideration. On the other hand in this case there is the evidence of the very long established connection between the *kepala* and his gang and the respondent who had been connected with each other since the liberation, which to my mind suggests that the gang was, as it were, the "outside" section of the respondent's workers working as and when required, but nonetheless his workers.

The next point was that notice was not given in terms of section 12 nor the claim made within six months from the time of the accident. As regards the notice, this is under the section a condition precedent to obtain compensation unless (the case being otherwise established) it is found that the employer is not prejudiced in his defence, by the absence of proper notice. In this case I do not think the employer was prejudiced in his defence. Such prejudice arises from, for instance, the fact that evidence which might have been obtainable was no longer obtainable for lapse of time, medical treatment which might have averted loss of capacity to work could not be given and the like. In this case there was no difficulty in ascertaining the facts. The difficulty was, what conclusion was to be reached from these facts, and in the injury of such seriousness lack of early treatment was unlikely to make any difference. I think this case comes on the facts within the principles in *Eydmann v. Premier Accumulator Co. Ltd.*[8] and *Scott v. Guest*[9]

As regards the question of the failure of the applicant to make the claim within six months this has been held to be a question of law on deciding whether

the failure shall be a bar to pursuing the claim. I was referred in this connection to the case of *Philips v. Sidebottom & Co.*[10], *Gill v. Boniface*[11] and *Walker v. Crystal Palace Football Club Ltd.*[12]. The evidence of the doctor who referred to the hospital records and of the hospital report, which was put in, showed that the applicant was admitted on the 27th January 1951 for some two months, and again on the 20th November 1951 for another two months and again on the 4th February, 1952 for eight months. From his appearance before me it was too obvious that he could not walk or do very much for himself. The medical evidence confirmed this. The important case, I suggest on this part of the law is that of *Maund v. Barton*[13]. There, as in this case, the applicant was ignorant of the law — which, of course, does not jusify the remedy of a mistake. But such ignorance does not necessarily mean that there cannot at the same time be other reasonable cause or other sufficient evidence. In the *Maund case*[13] the "reasonable cause" referred to was the seriousness of the injured workman's injury which prevented him or which may have prevented him during the critical period from doing business and instructing the making of his claim. Here the applicant was ignorant of his rights and did not probably know how to protect his rights but Government Officers, the Almoner of the General Hospital and the officers of the Labour Department took as they are in duty bound what steps they could to enable him to obtain his rights. Exhibit III shows that they met with the difficulty — which in my experience from previous cases is very common — that the applicant had no knowledge who employed him or of the respondent just as the respondent had no knowledge of the applicant. That at least is what the papers show. The information was however finally obtained. At first in my opinion the real cause of the failure in making the claim was the difficulty in obtaining this information, and the difficulty in obtaining this information might be due to the applicant's inability to walk or move except with the greatest difficulty. Had he been about and on his feet he would have found the members of the gang who "called" him to work, who in turn would have led him to the gang leader, who in turn would have indicated the respondent — thus enabling the officers to ascertain the respondent and bring the case within the proper time. But the applicant and his wife when they gave evidence on this point while bringing out that the applicant was crippled and immobile in his house also indicated by their admission that the applicant knew the *kepala's* name and where he was to be found and that they knew at or even before the accident something (though probably not much) about workmen's compensation. This is contrary to what Exhibit III suggests. But this is an admission against the applicant's interest and I cannot refuse to take it even though other evidence suggests a different state of affairs. I must take it on the evidence that the failure to pursue the claim did not arise because the applicant's injury or debility from it prevented him from obtaining the necessary information but was from a mistake in law in not knowing within what period the claim must be pursued. A mistake in law is not one which once made can be remedied. This is most unfortunate for the workman but the provision is an integral part of the Ordinance by which I consider I am bound and I must dismiss the case on that ground.

The point that the labour was casual was not pressed. It is a question of fact. It is hard to define "casual" in reference to employment, though it is easy to give instances e.g. a job given to some passer by which job the employer would not ordinarily bother to do but doing which enables the worker to earn a dollar or two and which the employer allows for that reason. This is not the case here. The work was the applicant's normal work and the respondent normally required that kind of work to be done. I do not as a matter of fact consider it to be employment of a casual nature nor, for the purpose of this particular section, was the applicant employed otherwise than for the purposes of the employer's trade or business.

ORDER: Having considered the matters submitted to me I find in fact that the applicant fell from a plank on 27th January 1951 while engaged in unloading cargo from a lighter at Boat Quay, Singapore, and suffered injury; that he was a workman employed by the respondent at the time of the accident; that notice not having been given to the respondent within seven days after the happening thereof the respondent was not prejudiced in his defence for the want of such notice; that the applicant failed to pursue his claim within six months from the occurrence of the accident; and that the wages of the applicant were $110 a month. I find in law that the accident arose out of and in the course of the applicant's employment with the respondent; and that failure to make the claim within six months of the occurrence of the accident was not occasioned by a reasonable cause within the meaning of section 12 of the Ordinance. I therefore dismiss the application.

Application dismissed.